

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 45 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DWARKADAS GEHANMAL BHAIYA

Versus

STATE OF GUJARAT

Appearance:

MR SG UPPAL for Petitioner
MR Y.F. MEHTA, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 06/12/96

ORAL JUDGEMENT :- (Per Pandya, J.)

1. The accused-appellant was tried by the learned Additional Sessions Judge, Junagadh, in Sessions Case No.70 of 1988, for offence under Section 302 and Section 201, both of I.P.C. By his judgment dated 26.12.1988, the learned Trial Judge was pleased to hold the accused

guilty for both the offences and has, therefore, awarded life imprisonment and a fine of Rs.500/-, and in default, R.I. for three months for the principal offence and for the offence under Section 201, he has awarded 3 years imprisonment with fine of Rs.500/-, and in default, three months R.I. The substantive sentences were ordered to run concurrently.

2. The case of the prosecution is that, on the evening of 12.2.1988, at about 6.30 P.M., the deceased was attacked by the accused with reverse portion of an axe and, thereafter, using iron hoop, a vital blow on the neck was given and, thereafter, inserting the iron hoops in the mouth of the deceased, the dead body was thrown into a nearby ditch filled with stale water. This happened inside the premises of a closed mill, known as Alana Mill, within the area of Veraval town, district Junagadh.

3. The family members of the deceased-Noorbhai started searching for him as he did not come back after 7.00 P.M., which was his usual time to return and in spite of all this, he could not be found. The family members searched at different places and even consulted astrologers for that purpose. Eventually the dead body came out floating and it was discovered and that led to the investigation.

4. As the dead body was found from the said ditch inside the said mill premises and as the deceased was working in that mill, the complainant, who is the son of the deceased, promptly went there and identified the dead body. The complainant-Mohammedbhai Noorbhai, thereafter, gave the complaint not disclosing the name of any accused.

5. Later on, in the course of investigation, it was found by the Police that, it is present accused who did the aforesaid deed and the accused came to be arrested.

6. The prosecution is relying upon the discovery Panchnama drawn in the course of investigation, Ex.21 and the deposition of Panch witness-Jagmal Arjan, Ex. 20, respectively pages 66 and 63 of the paper book. One more pinching evidence so far as the prosecution is concerned would be that of Deva Rama, P.W. 4, Ex.11, pages 49 to 51 of the paper book. The accused is said to have confessed at least to the extent of giving axe blow to the deceased before this witness.

7. The learned advocate, Shri Uppal appearing for

the accused-appellant strongly urged that Deva Rama's deposition cannot be relied upon as he did not bother to inform the police, though the accused confessed to that limited extent. However, it turns out from his deposition that he had to attend a wedding in his in-laws' family on the date of the incident itself and, therefore, he went away after hearing the story of the accused. The confession that has come out from the examination in chief of Deva Rama does not relate the murder itself, but confine to giving of axe blows. By the time he comes back, the dead body is recovered and his statement is recorded. He stick to it in the aforesaid extent in his examination in chief.

8. No doubt, Deva Rama has been cross-examined at length and obliquely it was hinted that he was unhappy with his wife. But beyond that, no suggestion is put to him that either the accused was in relation with or had an eye on the wife of this witness and, therefore, he is falsely implicated. No reason whatsoever is suggested in the cross-examination of Deva Rama as to why, if at all he does so, he has falsely implicated the accused.

9. Coupled with this is the fact that the discovery led to finding of axe, which according to the F.S.L. report, Ex.29/3 was found containing blood and so was the Lungi and other clothes. The link is important from the prosecution point of view because after doing away with the deceased, putting his dead body in it, it was dragged to the said pond where the dead body remained until it came out and starting floating.

10. So far as the homicidal aspect of the incident is concerned, there is no dispute whatsoever. The doctor, who has performed the post-mortem examination, has clearly stated that there was injury on the neck which was found to have cut Trachea as well as both the major blood vessels, namely, carotid artery and jugular vein.

11. The external injury described in the P.M. note Ex.7 clearly indicates that, starting from the centre of the neck intravenous direction the cut proceeds towards the left and, in the process, both the major blood vessels were injured.

12. This exactly is the case of the prosecution. After giving blows with axe, i.e. with the reverse portion of it, and making use of the iron hoop, the fatal blow-cut on the neck was given. The blows given by the axe resulted into fracture of humerus of both the arms. The deceased was thus done brutally to death. Under the

circumstances, in our opinion, there cannot be any manner of doubt that whosoever did it, it was done with clear intention of causing death.

13. The evidence on record which virtually goes unchallenged, though lengthy cross-examination was carried out, therefore, does not lead to any infirmity in linking the accused with the offence. The result will, therefore, be that the conviction will have to be sustained. The appeal is, therefore, dismissed. The order of the Trial Court is confirmed.

...